

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates 20-21 February 2008

Question: aet 5

Topic: Markets Issues

Hansard Page: Written

Senator WATSON asked:

- ASX LTD is both a stock market regulator, being the owner of the major stock exchange, but is also listed on that same exchange. **Does ASIC foresee any problems with the ASX being a player and a market regulator?**
- The Chief Executive of the ASX, Mr Rob Elstone, was quoted in the media as saying that it is not the practice of short selling that is the problem, more so the lending of stock. That it lacks transparency. **Does ASIC believe that there is any advantage in increasing regulation in the stock lending market?**
- Could increased regulation lead to a less competitive Australian financial system relative to the rest of the world? Does ASIC have any modelling on the impacts of regulation?
- A plan touted in the media was to register stock lending so as short selling could be traced. **Could this lead to a breakdown of client anonymity between two stock trading parties?**

Answer:

Question 1: ASX LTD is both a stock market regulator, being the owner of the major stock exchange, but is also listed on that same exchange. Does ASIC foresee any problems with the ASX being a player and a market regulator?

Answer: This is a policy matter for Government. The conflict of interest between ASX's commercial interests and its supervisory obligations was contemplated by Parliament at the time ASX demutualised and listed on its own exchange in 1998. The Corporations Act contains a range of measures to address how these conflicts are to be managed. The Act does not prohibit the existence of conflicts.

In our annual assessment of ASX, ASIC reviews how ASX manages its conflicts and whether it is meeting its obligations under the Act. Our previous reports, which are provided to the Minister, are public documents. ASIC also reviews events as they occur throughout the year to ensure that conflicts are being properly managed.

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ASX does not supervise itself as a listed entity. ASIC performs this role, including monitoring of continuous disclosure by ASX Limited, and trading of securities in ASX Limited and related exchange traded derivatives such as options and warrants.

Question 2: The Chief Executive of the ASX, Mr Rob Elstone, was quoted in the media as saying that it is not the practice of short selling that is the problem, more so the lending of stock. That it lacks transparency. Does ASIC believe that there is any advantage in increasing regulation in the stock lending market?

Answer: ASIC does not believe there is any lack of transparency or need to supplement existing regulation of uncovered (naked) short sales. A naked short sale is where a broker, either on behalf of the client or for a proprietary trade, enters an order in the market and does not have in place arrangements for the delivery of securities for settlement.

However we note concerns about some definitional ambiguity in the Corporations Act in relation to covered short selling. A covered short sale is generally taken to mean where a broker (either on behalf of a client or as principal) enters an order in the market and has arrangements in place for the delivery of securities, typically by entering securities lending arrangements.

ASIC is currently working with Treasury and the ASX to determine the most appropriate form of legislative change to ensure that disclosure requirements apply to covered short sales. We are also working with the ASX and Treasury to progress amendments to ASX Market Rules to further clarify and strengthen disclosure of short selling.

Question 3 Could increased regulation lead to a less competitive Australian financial system relative to the rest of the world?

This is a policy matter for Government.

Does ASIC have any modelling on the impacts of regulation?

Late last year ASIC and the Finance Industry Council of Australia (FICA) commissioned Chant Link & Associates to conduct a preliminary study of industry perceptions about the cost impact of the regulatory framework ASIC administers. Chant Link's report is available on ASIC's web page.

Question 4: A plan touted in the media was to register stock lending so as short selling could be traced. Could this lead to a breakdown of client anonymity between two stock trading parties?

Answer: We refer to the initiatives discussed above in Question 2. Until the precise scope of reporting requirements are settled, ASIC is not in a position to comment.